

BENNETT, BRICKLIN & SALTZBURG LLP

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

KATHERINE ELIZABETH NEIMER :
a minor, by and through JAMES J. NEIMER :
and REBECCA NEIMER, her parents and :
natural guardians, :

Plaintiffs :

v. :

CI-02-CV-4034

CITY OF LANCASTER; LANCASTER :
RECREATION COMMISSION; and :
ISMAEL ALVAREZ, :

Defendants :

JURY TRIAL DEMANDED

Judge Newcomer

**ANSWER OF THE CITY OF LANCASTER AND THE
LANCASTER RECREATION COMMISSION TO MOTION OF
PLAINTIFFS FOR RECONSIDERATION PURSUANT TO
F.R.C.P. 60(b)(6), TO AMEND COMPLAINT PURSUANT TO
F.R.C.P. 15(a), AND TO REJOIN PARTIES PURSUANT TO F.R.C.P. 19(a)(1)**

1. Admitted.

2-3. Denied as stated. The City of Lancaster (City) and the Lancaster Recreation Commission (Recreation Commission) believe that the initial action was number 02-CV-4034 filed on June 24, 2002 and the second action was number 02-CV-9224 filed on December 20, 2002. It is admitted that number 02-CV-9224 was withdrawn on February 28, 2003.

4. Admitted. By way of further answer the dismissed counts were in the action docketed to number 02-CV-4034.

5. Admitted.

6. Neither admitted or denied. Responding Defendants have no actual knowledge of what Counsel Bily discovered. By way of further answer, it would appear, moreover, that Counsel Bily gained access to the records of Lancaster City Bureau of Police, which records have been withheld from Plaintiff's counsel pursuant to the provisions of the Criminal History Records Information Act, 18 Pa.C.S.A. §9101 et seq. These records were subpoenaed by Plaintiffs' previous counsel. A copy of the letter refusing disclosure of investigative information is attached hereto as Exhibit A.

7(a-g).Neither admitted or denied. The information in these paragraphs may have been improperly and illegally obtained from the records of the Lancaster City Bureau of Police. It would appear that Plaintiff James J. Neimer, who is a police officer with the Lancaster City Bureau of Police, obtained and disclosed this investigative information in violation of the Criminal History Records Information Act which permits the disclosure

of criminal history record information only. "The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information in records specified in Section 9101 (relating to scope)." 18 Pa.C.S.A. §9102. Disclosure of intelligence, investigative or treatment information is permitted only to other criminal justice agencies. 18 Pa.C.S.A. §9106(c)(4).

9. (sic)Neither admitted or denied. The Order of December 13, 2002 applies to the former co-defendants and not to the City or the Recreation Commission.

10. Neither admitted or denied for the reasons set forth in the answer to Number 9.

11. Neither admitted or denied for the reasons set forth in the answer to Number 9. By way of further answer, the City and the Recreation Commission oppose Plaintiffs' motion for the reason that trial in this case is scheduled to begin on October 27, 2003 and reconsideration of the Order of December 13, 2002, amending pleadings, and rejoining parties will clearly delay trial without good cause. The City and the Recreation Commission point out that the dismissal of the other Defendants happened some ten months ago and the denial of the production of the Bureau of Police records is dated June 16, 2003, some four months ago. Plaintiffs' counsel has already obtained one extension of time of trial by virtue of his late entry into the case. The City and the Recreation Commission object to any further delay.

In the event that the Court should grant Plaintiffs' motion and the trial of the case is further delayed, the City and the Recreation Commission request permission to renew their motion for summary judgment on the ground that discovery is now closed. No new information has been produced by Plaintiffs pertaining to the City and the Recreation Commission.

WHEREFORE, the City of Lancaster and the Lancaster Recreation Commission respectfully request that Plaintiffs' motion for reconsideration, to amend the Complaint, and to rejoin parties be denied or, in the alternative that the City of Lancaster and the Lancaster Recreation Commission be permitted to renew their motion for summary judgment.

Respectfully submitted,

Dated: _____, 2003

BENNETT, BRICKLIN & SALTZBURG LLP

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PROOF OF SERVICE

I HEREBY CERTIFY that I am this day serving the foregoing Answer of the City of Lancaster and the Lancaster Recreation Commission to Motion of Plaintiffs for Reconsideration Pursuant to F.R.C.P. 60(b)(6), to Amend Complaint Pursuant to F.R.C.P. 15(a), and to Rejoin Parties Pursuant to F.R.C.P. 19(a)(1) on the persons and in the manner indicated below.

Service by Facsimile and First Class Mail, addressed as follows:

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Dated: _____, 2003

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